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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2019

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A N A C T

RELATING TO HEALTH AND SAFETY - THE REPRODUCTIVE HEALTH CARE ACT

Introduced By: Representatives Ajello, Blazejewski, Casimiro, Craven, and Fogarty

Date Introduced: January 16, 2019

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 23 of the General Laws entitled "HEALTH AND SAFETY" is hereby  
2 amended by adding thereto the following chapter:

3 CHAPTER 4.13

4 REPRODUCTIVE HEALTH CARE ACT

5 **23-4.13-1. Short title.**

6 This chapter shall be known and may be cited as the "Reproductive Health Care Act."

7 **23-4.13-2. Noninterference in reproductive health care.**

8 (a) Neither the state, nor any of its agencies, or political subdivisions shall:

9 (1) Restrict an individual person from preventing, commencing, continuing, or  
10 terminating that individual's pregnancy prior to fetal viability;

11 (2) Interfere with an individual person's decision to continue that individual's pregnancy  
12 after fetal viability;

13 (3) Restrict an individual person from terminating that individual's pregnancy after fetal  
14 viability when necessary to preserve the health or life of that individual;

15 (4) Restrict the use of evidence-based, medically recognized methods of contraception or  
16 abortion except in accordance with evidence-based medically recognized standards; or

17 (5) Restrict access to evidence-based, medically recognized methods of contraception or  
18 abortion or the provision of such contraception or abortion except in accordance with evidence-  
19 based medically recognized standards.

1 (b) For purposes of this section, "fetal viability" means that stage of gestation where the  
2 attending physician, taking into account the particular facts of the case, has determined that there  
3 is a reasonable likelihood of the fetus' sustained survival outside of the womb with or without  
4 artificial support.

5 (c) Notwithstanding the foregoing, this section shall not be construed to:

6 (1) Abrogate the provisions of §§ 11-9-18, 11-54-1, 23-4.7-1 through 23-4.7-8, 23-13-21,  
7 23-17-11, or 42-157-3(d).

8 (2) Prevent the department of health from applying to licensed health care facilities that  
9 provide abortion, any generally applicable regulations or standards that are in accordance with  
10 evidence-based, medically accepted standards for the provision of abortion, provided that such  
11 adoption or enforcement is not a pretext for violating subsection (a) of this section.

12 SECTION 2. Chapter 11-3 of the General Laws entitled "Abortion" is hereby repealed in  
13 its entirety:

14 **CHAPTER 3**

15 **Abortion**

16 **11-3-1. Procuring, counseling or attempting miscarriage.**

17 ~~Every person who, with the intent to procure the miscarriage of any pregnant woman or~~  
18 ~~woman supposed by such person to be pregnant, unless the same be necessary to preserve her life,~~  
19 ~~shall administer to her or cause to be taken by her any poison or other noxious thing, or shall use~~  
20 ~~any instrument or other means whatsoever or shall aid, assist or counsel any person so intending~~  
21 ~~to procure a miscarriage, shall if the woman die in consequence thereof, be imprisoned not~~  
22 ~~exceeding twenty (20) years nor less than five (5) years, and if she does not die in consequence~~  
23 ~~thereof, shall be imprisoned not exceeding seven (7) years nor less than one (1) year; provided~~  
24 ~~that the woman whose miscarriage shall have been caused or attempted shall not be liable to the~~  
25 ~~penalties prescribed by this section.~~

26 **11-3-2. Murder charged in same indictment or information.**

27 ~~Any person who shall be charged with the murder of any infant child, or of any pregnant~~  
28 ~~woman, or of any woman supposed by such person to be or to have been pregnant, may also be~~  
29 ~~charged in the same indictment or information with any or all the offenses mentioned in 11-3-1,~~  
30 ~~and if the jury shall acquit such person on the charge of murder and find him guilty of the other~~  
31 ~~offenses or either of them, judgment and sentence may be awarded against him accordingly.~~

32 **11-3-3. Dying declarations admissible.**

33 ~~In prosecutions for any of the offenses described section 11-3-1, in which the death of a~~  
34 ~~woman is alleged to have resulted from the means therein described, dying declarations of the~~

1 ~~deceased woman shall be admissible as evidence, as in homicide cases.~~

2 **11-3-4. Construction and application of section 11-3-1.**

3 ~~It shall be conclusively presumed in any action concerning the construction, application~~  
4 ~~or validity of section 11-3-1, that human life commences at the instant of conception and that said~~  
5 ~~human life at said instant of conception is a person within the language and meaning of the~~  
6 ~~fourteenth amendment of the constitution of the United States, and that miscarriage at any time~~  
7 ~~after the instant of conception caused by the administration of any poison or other noxious thing~~  
8 ~~or the use of any instrument or other means shall be a violation of said section 11-3-1, unless the~~  
9 ~~same be necessary to preserve the life of a woman who is pregnant.~~

10 **11-3-5. Constitutionality.**

11 ~~If any part, clause or section of this act shall be declared invalid or unconstitutional by a~~  
12 ~~court of competent jurisdiction, the validity of the remaining provisions, parts or sections shall~~  
13 ~~not be affected.~~

14 SECTION 3. Chapter 23-4.8 of the General Laws entitled "Spousal Notice for Abortion"  
15 is hereby repealed in its entirety.

16 **CHAPTER 23-4.8**

17 **Spousal Notice for Abortion**

18 **23-4.8-1. Declaration of purpose.**

19 ~~The purpose of this chapter is to promote the state's interest in furthering the integrity of~~  
20 ~~the institutions of marriage and the family.~~

21 **23-4.8-2. Spousal notice requirements.**

22 ~~If a married woman consents to an abortion, as that consent is required by chapter 4.7 of~~  
23 ~~this title, the physician who is to perform the abortion or his or her authorized agent shall, if~~  
24 ~~reasonably possible, notify the husband of that woman of the proposed abortion before it is~~  
25 ~~performed.~~

26 **23-4.8-3. Exceptions.**

27 The requirements of § 23-4.8-2 shall not apply if:

28 (1) ~~The woman having the abortion furnishes to the physician who is to perform the~~  
29 ~~abortion or the physician's authorized agent prior to the abortion being performed a written~~  
30 ~~statement that she has given notice to her husband of the proposed abortion or a written statement~~  
31 ~~that the fetus was not fathered by her husband;~~

32 (2) ~~The woman and her husband are living separate and apart or either spouse has filed a~~  
33 ~~petition or complaint for divorce in a court of competent jurisdiction;~~

34 (3) ~~The physician who is to perform the abortion or his or her authorized agent receives~~

1 ~~the written affirmation of the husband that he has been notified of the proposed abortion; or~~

2 ~~(4) There is an emergency requiring immediate action. In the case of an emergency, the~~  
3 ~~woman's attending physician shall certify in writing on the patient's medical record that an~~  
4 ~~emergency exists and the medical basis for his or her opinion.~~

5 **23-4.8-4. Penalties.**

6 ~~In the event a physician performs an abortion, as defined by chapter 4.7 of this title, upon~~  
7 ~~a woman who he or she knows is married and the physician knowingly and intentionally violates~~  
8 ~~the requirements of this chapter, he or she shall be guilty of "unprofessional conduct" for the~~  
9 ~~purposes of § 5-37-5.1.~~

10 **23-4.8-5. Severability.**

11 ~~If any section or provision of this chapter or the application of any section or provision is~~  
12 ~~held invalid, that invalidity shall not affect other sections, provisions or applications, and to this~~  
13 ~~end the sections and provisions of this chapter are declared severable.~~

14 SECTION 4. Chapter 23-4.12 of the General Laws entitled "Partial Birth Abortion" is  
15 hereby repealed in its entirety.

16 ~~CHAPTER 23-4.12~~

17 ~~Partial Birth Abortion~~

18 **23-4.12-1. Definitions.**

19 ~~(a) For purposes of this chapter, "partial birth abortion" means an abortion in which the~~  
20 ~~person performing the abortion vaginally delivers a living human fetus before killing the infant~~  
21 ~~and completing the delivery.~~

22 ~~(b) For purposes of this chapter, the terms "fetus" and "infant" are used interchangeably~~  
23 ~~to refer to the biological offspring of human parents.~~

24 ~~(c) As used in this section, "vaginally delivers a living fetus before killing the infant"~~  
25 ~~means deliberately and intentionally delivers into the vagina a living fetus, or a substantial~~  
26 ~~portion of the fetus, for the purpose of performing a procedure the person performing the abortion~~  
27 ~~knows will kill the infant, and kills the infant.~~

28 **23-4.12-2. Prohibition of partial birth abortions.**

29 ~~No person shall knowingly perform a partial birth abortion.~~

30 **23-4.12-3. Life of the mother exception.**

31 ~~Section 23-4.12-2 shall not apply to a partial birth abortion that is necessary to save the~~  
32 ~~life of a mother because her life is endangered by a physical disorder, physical illness, or physical~~  
33 ~~injury, including a life endangering condition caused by or arising from the pregnancy itself;~~  
34 ~~provided, that no other medical procedure would suffice for that purpose.~~

1            **23-4.12-4. Civil remedies.**

2            ~~(a) The woman upon whom a partial birth abortion has been performed in violation of §~~  
3 ~~23-4.12-2, the father of the fetus or infant, and the maternal grandparents of the fetus or infant,~~  
4 ~~and the maternal grandparents of the fetus or infant if the mother has not attained the age of~~  
5 ~~eighteen (18) years at the time of the abortion, may obtain appropriate relief in a civil action,~~  
6 ~~unless the pregnancy resulted from the plaintiff's criminal conduct or the plaintiff consented to~~  
7 ~~the abortion.~~

8            ~~(b) The relief shall include:~~

9            ~~(1) Money damages for all injuries, psychological and physical, occasioned by the~~  
10 ~~violation of this chapter; and~~

11            ~~(2) Statutory damages equal to three (3) times the cost of the partial birth abortion.~~

12            ~~(c) If judgment is rendered in favor of the plaintiff in an action described in this section,~~  
13 ~~the court shall also render judgment for a reasonable attorney's fee in favor of the plaintiff against~~  
14 ~~the defendant. If the judgment is rendered in favor of the defendant and the court finds that the~~  
15 ~~plaintiff's suit was frivolous and brought in bad faith, the court shall also render judgment for a~~  
16 ~~reasonable attorney's fee in favor of the defendant against the plaintiff.~~

17            **23-4.12-5. Penalty.**

18            ~~(a) Performance of a partial birth abortion deliberately and intentionally is a violation of~~  
19 ~~this chapter and shall be a felony.~~

20            ~~(b) A woman upon whom a partial birth abortion is performed may not be prosecuted~~  
21 ~~under this chapter for violating this chapter or any provision this chapter, or for conspiracy to~~  
22 ~~violate this chapter or any provision this chapter.~~

23            **23-4.12-6. Severability.**

24            ~~(a) If any one or more provisions, clauses, phrases, or words of § 23-4.12-3 or the~~  
25 ~~application of that section to any person or circumstance is found to be unconstitutional, it is~~  
26 ~~declared to be inseverable.~~

27            ~~(b) If any one or more provisions, sections, subsections, sentences, clauses, phrases or~~  
28 ~~words of the remaining sections or the application of them to any person or circumstance is found~~  
29 ~~to be unconstitutional, they are declared to be severable and the balance of the chapter shall~~  
30 ~~remain effective notwithstanding the unconstitutionality. The legislature declares that it would~~  
31 ~~have passed this chapter, and each provision, section, subsection, sentence, clause, phrase, or~~  
32 ~~words, with the exception of § 23-4.12-3, irrespective of the fact that any one or more provisions,~~  
33 ~~sections, subsections, sentences, clauses, phrases, or words be declared unconstitutional.~~

34            SECTION 5. Section 11-23-5 of the General Laws in Chapter 11-23 entitled "Homicide"

1 is hereby repealed.

2 **11-23-5. Willful killing of unborn quick child.**

3 ~~(a) The willful killing of an unborn quick child by any injury to the mother of the child,~~  
4 ~~which would be murder if it resulted in the death of the mother; the administration to any woman~~  
5 ~~pregnant with a quick child of any medication, drug, or substance or the use of any instrument or~~  
6 ~~device or other means, with intent to destroy the child, unless it is necessary to preserve the life of~~  
7 ~~the mother; in the event of the death of the child; shall be deemed manslaughter.~~

8 ~~(b) In any prosecution under this section, it shall not be necessary for the prosecution to~~  
9 ~~prove that any necessity existed.~~

10 ~~(c) For the purposes of this section, "quick child" means an unborn child whose heart is~~  
11 ~~beating, who is experiencing electronically measurable brain waves, who is discernibly moving,~~  
12 ~~and who is so far developed and matured as to be capable of surviving the trauma of birth with~~  
13 ~~the aid of usual medical care and facilities available in this state.~~

14 SECTION 6. Section 27-18-28 of the General Laws in Chapter 27-18 entitled "Accident  
15 and Sickness Insurance Policies" is hereby repealed.

16 **27-18-28. Health insurance contracts -- Abortion.**

17 ~~(a) No health insurance contract, plan, or policy, delivered or issued for delivery in the~~  
18 ~~state, shall provide coverage for induced abortions, except where the life of the mother would be~~  
19 ~~endangered if the fetus were carried to term or where the pregnancy resulted from rape or incest,~~  
20 ~~and except by an optional rider for which there must be paid an additional premium. This section~~  
21 ~~shall be applicable to all contracts, plans, or policies of:~~

22 ~~(1) All health insurers subject to this title;~~

23 ~~(2) All group and blanket health insurers subject to this title;~~

24 ~~(3) All nonprofit hospital, medical, surgical, dental, and health service corporations; and~~

25 ~~(4) All health maintenance organizations;~~

26 ~~(5) Any provision of medical, hospital, surgical, and funeral benefits, and of coverage~~  
27 ~~against accidental death or injury, when the benefits or coverage are incidental to or part of other~~  
28 ~~insurance authorized by the statutes of this state.~~

29 ~~(b) Nothing contained in this section shall be construed to pertain to insurance coverage~~  
30 ~~for complications as the result of an abortion.~~

31 SECTION 7. Section 36-12-2.1 of the General Laws in Chapter 36-12 entitled "Insurance  
32 Benefits" is hereby amended to read as follows:

33 **36-12-2.1. Health insurance benefits -- Coverage for abortions excluded.**

34 (a) The state of Rhode Island ~~or any city or town~~ shall not include in any health insurance

1 contracts, plans, or policies covering employees, any provision which shall provide coverage for  
2 induced abortions (except where the life of the mother would be endangered if the fetus were  
3 carried to term, or where the pregnancy resulted from rape or incest). This section shall be  
4 applicable to all contracts, plans or policies of:

- 5 (1) All health insurers subject to title 27;
- 6 (2) All group and blanket health insurers subject to title 27;
- 7 (3) All nonprofit hospital, medical, surgical, dental, and health service corporations;
- 8 (4) All health maintenance organizations; and
- 9 (5) Any provision of medical, hospital, surgical, and funeral benefits and of coverage  
10 against accidental death or injury when the benefits or coverage are incidental to or part of other  
11 insurance authorized by the statutes of this state.

12 (b) Provided, however, that the provisions of this section shall not apply to benefits  
13 provided under existing collective bargaining agreements entered into prior to June 30, 1982.

14 (c) Nothing contained herein shall be construed to pertain to insurance coverage for  
15 complications as the result of an abortion.

16 SECTION 8. Section 42-12.3-3 of the General Laws in Chapter 42-12.3 entitled "Health  
17 Care for Children and Pregnant Women" is hereby amended to read as follows:

18 **42-12.3-3. Medical assistance expansion for pregnant women/RItE Start.**

19 (a) The director of the department of human services is authorized to amend its title XIX  
20 state plan pursuant to title XIX of the Social Security Act to provide Medicaid coverage and to  
21 amend its title XXI state plan pursuant to Title XXI of the Social Security Act to provide medical  
22 assistance coverage through expanded family income disregards for pregnant women whose  
23 family income levels are between one hundred eighty-five percent (185%) and two hundred fifty  
24 percent (250%) of the federal poverty level. The department is further authorized to promulgate  
25 any regulations necessary and in accord with title XIX [42 U.S.C. § 1396 et seq.] and title XXI  
26 [42 U.S.C. § 1397 et seq.] of the Social Security Act necessary in order to implement said state  
27 plan amendment. The services provided shall be in accord with title XIX [42 U.S.C. § 1396 et  
28 seq.] and title XXI [42 U.S.C. § 1397 et seq.] of the Social Security Act.

29 (b) The director of the department of human services is authorized and directed to  
30 establish a payor of last resort program to cover prenatal, delivery and postpartum care. The  
31 program shall cover the cost of maternity care for any woman who lacks health insurance  
32 coverage for maternity care and who is not eligible for medical assistance under title XIX [42  
33 U.S.C. § 1396 et seq.] and title XXI [42 U.S.C. § 1397 et seq.] of the Social Security Act  
34 including, but not limited to, a non-citizen pregnant woman lawfully admitted for permanent

1 residence on or after August 22, 1996, without regard to the availability of federal financial  
2 participation, provided such pregnant woman satisfies all other eligibility requirements. The  
3 director shall promulgate regulations to implement this program. Such regulations shall include  
4 specific eligibility criteria; the scope of services to be covered; procedures for administration and  
5 service delivery; referrals for non-covered services; outreach; and public education. Excluded  
6 services under this paragraph will include, but not be limited to, induced abortion except ~~to~~  
7 ~~prevent the death of the mother~~ in cases of rape or incest or to save the life of the person.

8 (c) The department of human services may enter into cooperative agreements with the  
9 department of health and/or other state agencies to provide services to individuals eligible for  
10 services under subsections (a) and (b) above.

11 (d) The following services shall be provided through the program:

- 12 (1) Ante-partum and postpartum care;
- 13 (2) Delivery;
- 14 (3) Cesarean section;
- 15 (4) Newborn hospital care;
- 16 (5) Inpatient transportation from one hospital to another when authorized by a medical  
17 provider;
- 18 (6) Prescription medications and laboratory tests;

19 (e) The department of human services shall provide enhanced services, as appropriate, to  
20 pregnant women as defined in subsections (a) and (b), as well as to other pregnant women  
21 eligible for medical assistance. These services shall include: care coordination, nutrition and  
22 social service counseling, high risk obstetrical care, childbirth and parenting preparation  
23 programs, smoking cessation programs, outpatient counseling for drug-alcohol use, interpreter  
24 services, mental health services, and home visitation. The provision of enhanced services is  
25 subject to available appropriations. In the event that appropriations are not adequate for the  
26 provision of these services, the department has the authority to limit the amount, scope and  
27 duration of these enhanced services.

28 (f) The department of human services shall provide for extended family planning services  
29 for up to twenty-four (24) months postpartum. These services shall be available to women who  
30 have been determined eligible for RIte Start or for medical assistance under title XIX [42 U.S.C.  
31 § 1396 et seq.] or title XXI [42 U.S.C. § 1397 et seq.] of the Social Security Act.

32 SECTION 9. This act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO HEALTH AND SAFETY - THE REPRODUCTIVE HEALTH CARE ACT

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1           This act would codify the current state of the law on reproductive rights in Rhode Island  
2    by incorporating the protections set forth in Roe v. Wade limiting restrictions on an individual's  
3    decision to terminate a pregnancy. It would also update and correct Rhode Island codification of  
4    its general laws by formally removing statutes, or sections thereof, which have previously been  
5    declared unconstitutional and unenforceable by the courts but have remained in the general law  
6    codification, or are otherwise unenforceable under Roe v. Wade.

7           This act would take effect upon passage.

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